But it is also clear on the evidence that at the time of the stabbing the appellant had taken drink and may or may not have been under the influence of the drink which he had taken.

The trial Judge in his charge to the jury dealt with the matter in this way. He described the injury which it was said the appellant had inflicted on the deceased and he pointed out (as is frequently pointed out in such circumstances, and I hasten to add frequently and quite properly) that they were entitled to rely on the presumption that a man intends the natural and probable consequences of his acts and that in the circumstances of the present case that presumption, unless it was rebutted, would make out the intention to kill, which is a necessary ingredient in the crime of murder.

So far we are not prepared to quarrel with what his Lordship said.

He went on, however, to deal with the question of the drink which the appellant had taken and here unfortunately we find ourselves unable to agree with what he said.

There are two passages in the summing-up in which he dealt with the point. They are as follows:—

"It is no defence for the accused to say that he has no recollection of what happened because he was drunk. Where an accused person gets into a state of drunkenness of his own free will, the Court will not attach any importance to the fact that he was drunk and will draw the natural inferences from his acts. So if you are satisfied and sure in your minds that the accused did in fact stab the deceased, the fact that he was drunk is no defence."

and again at a later stage:

"You must put the question of drunkenness out of your minds when you come to consider your verdict, for, as I have already told you, voluntary drunkenness is no defence."

Now, no doubt these passages correctly state the effect of the Penal Code as it was before it was amended in 1936 and no doubt they correctly state the relevant provisions to-day of the Indian Penal Code, although I am not sure that they correctly state the law as it is in fact applied in India to-day. That, however, is beside the point, because in 1936 the Penal Code was amended and there is very little doubt that it was so amended in the light of the decision of the House of Lords in the case of *Director of Public Prosecutions* v. *Beard* [1] where the late Lord Birkenhead reviewed very extensively the English law relating to drunkenness which by that time had fallen into a certain amount of confusion.

In particular, the Penal Code was amended by the insertion of the following new sub-section 86(ii):—

"Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence."

That is the same as the English law and an example of how it has been put to a jury is to be found in the words of Lord Coleridge in *Meade's case* [2]. Lord Coleridge's words were:—

"Where it is part of the essence of a crime that a motive, a particular motive, shall exist in the mind of the man who does the act, the law declares this — that if the mind at that time is so obscure by drink, if the reason is dethroned and the man is incapable therefore of forming that intent, it justifies the reduction of the charge from murder to manslaughter."

Had some such words been used to the jury in the present case and had their attention been directed in the light of them to the evidence regarding drunkenness we find it quite impossible to say whether or not they would have brought in a verdict of murder. After all it was a case where the prosecution were relying on a presumption to make out the intention which is a necessary ingredient of murder and the jury should have been invited to consider the evidence, such as it was, of drunkenness as something which might have the effect of rebutting that presumption.

But they were not so directed and in the circumstances we have no option but to quash the conviction for murder. Using our powers under the Courts Ordinance we substitute a conviction for culpable homicide not amounting to murder and impose a sentence of eight years' imprisonment.

I should add that it is not out of any lack of consideration for the other arguments addressed to us by counsel for the appellant that we have not dealt with them specifically. We think, however, that it is desirable we should deal with the one ground and the one ground only in relation to which our views will be of assistance elsewhere.

Conviction for culpable homicide not amounting to murder substituted.

Solicitors: *Braddell & Ramani.*

INDO AUSTRALIAN TRADING CO. LTD. v. MASAHAT & ORS.

[A. C. J. (Chua J.) January 17, 1962]

[Singapore — District Court Appeal No. 5 of 1961]

Landlord and tenant — Death of contractual tenant prior to 8th September, 1947 — Payment of rent by daughter occupier — Acceptance of rent by landlord — Sale of property to new landlord in 1949 — Acceptance of rent by new landlord — Status of occupier — Status of members of occupier's family.

Prior to May 1949, one Gunny Puteh was the registered tenant of property known as 75-D Moonstone Lane and the landlords were the Estate and Trust Agencies (1927) Ltd. In fact, however, Gunny Puteh had died 20 years earlier and his daughter, Puteh binte Ghani, was in occupation and had been paying the rent. The Estate and Trust Agencies, it appeared, were aware of the true position and continued nevertheless to accept rent from her whilst continuing to show her deceased father as tenant of the premises on their records. In May 1949, the plaintiffs bought the property from the Estate and Trust Agencies and in due course were informed of the true position regarding the property occupied by Puteh binte Ghani. However, they continued to accept rent from her up to the end of October 1956.

In July 1957, Puteh binte Ghani having fallen into arrears with the rent, the plaintiffs sent a notice to quit,

addressed to Gunny Puteh, but served it on Puteh binte Ghani. The notice expired on August 31, 1957 and though the arrears were tendered by her the plaintiffs refused acceptance.

Proceedings were instituted by the plaintiffs in December 1959 confining their claim to recovery of possession of the land only. In the meantime, Puteh binte Ghani had died on April 11, 1958 and her husband, the first defendant, was in occupation with his relatives.

The District Judge held that as the plaintiffs had been informed of the death of Gunny Puteh and as they had nevertheless continued to accept rent from his daughter they were estopped from denying that she was their tenant and he dismissed the claim of the plaintiffs. On appeal,

Held: (1) no proof had been adduced to show that Puteh binte Ghani became a contractual tenant or a tenant by estoppel of the Estate and Trust Agencies prior to September 8, 1947;

(2) in the circumstances, Puteh binte Ghani became a statutory tenant of the premises on September 8, 1947 when the Control of Rent Ordinance, 1947 came into force;

(3) when the appellants became landlords Puteh binte Ghani was therefore a statutory tenant and their acceptance of rent from her could not create a contractual tenancy between them;

(4) on the death of Puteh binte Ghani her husband was not protected by section 16 of the Control of Rent Ordinance and the appellants were therefore entitled to possession.

DISTRICT COURT APPEAL.

L. A. J. Smith for the appellants.

J. F. McWilliam for the respondents.

Cur. Adv. Vult.

Chua J.: This is an appeal from a decision of the District Court dismissing the claim of the landlords (the appellants) for possession of a piece of land, which forms part of Lot 370/110 of Mukim XVII. There is a building on the said land known as No. 75-D Moonstone Lane, which was formerly known as No. 1299 Serangoon Road. The landlords limit their claim to possession of the said land alone.

This said land forms part of land known as Woodsville, which was bought by the appellants in May, 1949. The appellants were supplied by the vendors with a list showing the persons in occupation of the land. This list disclosed that house No. 1299 Serangoon Road was let out to one Gunny Puteh.

After the appellants purchased the Woodsville property, they gave notice of their purchase to the persons shown on the list. The appellants received a letter dated the 29th June, 1949, from Puteh binte Ghani in the following terms:

"Together with this I am sending cash which is *$10.00* (Ten Dollars Only) for ground rent of house No. 1299 made for May and June, 1949.

GUNNY BIN PUTEH is in fact the name of my father. And he died 20 years ago. I have reported this to the Manager, Estate & Trusts Agencies (1927) Ltd., asking the name be changed. But the Manager said, it was not necessary to change the name, because if the father died it would be certainly the child who would see the payment of his rent.

So that from that time on right up to now it is I who have been paying the ground rent of the above-stated house, but the receipt that I received E.T.A. still continued to be in the name GUNNY bin Puteh.

For this reason I hope you will willingly receive the two months' ground rent that I am sending. And I hope you will change the name from *GUNNY BIN PUTEH* to my name which truly is PUTEH BINTE GHANI."

On the 15th July, 1949, the appellants sent the following letter to Puteh binte Ghani:

"Re: Land at Kampong Marican on which premises No. 1299 stands.

We are in receipt of your letter of the 29th ultimo enclosing $10.00 cash.

As you are not the tenant we are not prepared to accept any rent from others than the tenant. A Notice to Quit has already been served and we are taking proceedings for ejectment.

Please call at our office during office hours and receive the sum of $10.00 which you have sent."

After that nothing appears to have happened until November, 1952, when the appellants again wrote a letter addressed to Gunny Puteh demanding the payment of rent from the 1st July, 1949 to 31st October, 1952 amounting to $200. The sum of $200 was duly paid, presumably by Puteh binte Ghani, and rent receipts were issued by the appellants in the name of Gunny Puteh. The rent was continued to be paid right up to the end of October, 1956.

On the 27th November, 1953, the appellants sent a notice addressed to Gunny Puteh asking for particulars of his sub-tenants. To that notice a reply was received by the appellants from Puteh binte Ghani the relevant portion of which reads as follows:

"I beg to state that I am the owner of the above premises since the last thirty years and without taking any sub-tenant and even up to this date that I am staying with my daughters and grandsons and no other people staying in the house."

Nothing appears to have happened after this until the 16th July, 1957, when the appellants, through their solicitors, sent a Notice to Quit to Gunny Puteh in the following terms:

"We are instructed by Messrs. Indo Australian Trading Co. Ltd., your landlords, to give you notice as hereunder.

You have failed to pay rent due to our clients from 1st November, 1956. By letter dated the 10th June, 1957, our clients demanded payment of all arrears of rent from 1st November, 1956, to 30th June, 1957, at the rate of $5 per month, amounting to $40.

We are now instructed to give you notice, which we hereby do, requiring you to quit and deliver up vacant possession to our clients of the land occupied by you as tenant of our clients at the monthly ground rent of $5 and on which land (Part of Lot No. 370/110 Mk. XVII), premises No. 75-D, Moonstone Lane, Singapore, stands, on the 31st day of August, 1957, or at the end of one calendar month which expires next hereafter according to the tenor of your tenancy.

Failing compliance with this notice and demand, an action for ejectment or other legal proceedings will be taken against you without further notice."

On the 17th July, 1957, the appellants, through their solicitors, sent the following letter to Puteh binte Ghani:

"We are acting for Messrs. Indo Australian Trading Co. Ltd., owners of the above land.

We are forwarding herewith a Notice to Quit dated the 16th July, 1957, and addressed to Gunny Puteh, the tenant of the above land, to you also for service on you as either the agent of the tenant or the person having

the control and charge of the above land being Pt. Lot 370/110 Mk. XVII, on which premises No. 75-D, Moonstone Lane, Singapore, stands.

As you are not the tenant on record, you have no right to occupy the said land and we are instructed to give you notice, which we hereby do, requiring you to quit the said land on the 31st day of August, 1957. Failing compliance, legal proceedings will be taken against you for ejectment."

The arrears of rent of $40 were tendered by Madam Puteh binte Ghani but were refused by the appellants.

The appellants took no action on their letters until December, 1959, when they took the present proceedings. In the meantime Madam Puteh binte Ghani died on the 11th April, 1958, and the husband of Madam Puteh binte Ghani, the 1st respondent, continued to reside in the premises with the other respondents who are his relatives.

The District Judge, after hearing the evidence, found as a fact that Gunny Puteh died sometime prior to 1949 and held that the appellants, upon the facts, are estopped from denying that Madam Puteh binte Ghani became their tenant upon their acceptance of the rent. The District Judge in his grounds of decision said that, "the plaintiff having accepted the rent after notice that Gunny Puteh was dead and that rent would be paid by Madam Puteh binte Ghani cannot now be heard to say that it did not intend to enter into the relationship of landlord and tenant." The District Judge arrived at the conclusion that Madam Puteh binte Ghani was a tenant by estoppel on two facts:

(1) by her telling the appellants that Gunny Puteh was dead and

(2) by her paying the rent and the appellants accepting the rent.

Now let us examine what the position was before the appellants became the owner.

According to the letter of Madam Puteh binte Ghani dated the 29th June, 1949, to the appellants (which is set out above), Madam Puteh binte Ghani said that Gunny bin Puteh died sometime in 1929 and that she had reported that fact to the then owner, the Estate & Trust Agencies, but nowhere in her letter did she say that the Estate & Trust Agencies had accepted her as the tenant on the death of her father. In fact her letter says that the Estate & Trust Agencies would not change the tenancy into her name. No effort was made by the respondents to prove that Madam Puteh binte Ghani became a contractual tenant of Estate & Trust Agencies after her father's death or that she became a tenant by estoppel. The evidence was that according to the list submitted by the Estate & Trust Agencies to the appellants, when the latter purchased the property, the Estate & Trust Agencies did not regard Madam Puteh binte Ghani as the tenant. There has been no finding by the District Judge that Madam Puteh binte Ghani became a contractual tenant or a tenant by estoppel prior to 8th September, 1947.

On the 8th September, 1947, the Control of Rent Ordinance, 1947, came into force and it is clear that on that day Madam Puteh binte Ghani became a statutory tenant as she was then in possession of the premises and was a member of Gunny Puteh's family, within the meaning of section 2 of that Ordinance.

So, at the time the appellants became the owners of the property, Madam Puteh binte Ghani was the statutory tenant of the premises and the appellants were obliged to accept rent from her and their acceptance of the rent from her could not create a contractual tenancy between them. In my view the District Judge was wrong in coming to the conclusion that the appellants were estopped from denying that Madam Puteh binte Ghani became their tenant upon their acceptance of the rent.

On the death of Madam Puteh binte Ghani the 1st respondent, the husband of Madam Puteh binte Ghani and the 9th respondent, the daughter of Madam Puteh binte Ghani, are not protected by section 16 of the Control of Rent Ordinance (Cap. 242). The other respondents are not even members of Madam Gunny binte Puteh's family within the meaning of section 2 of the Ordinance.

This appeal must be allowed. There will therefore be an order for possession as claimed.

Appeal allowed.

Solicitors: *L. A. J. Smith; P. T. Wong & Co.*

Re AN ADVOCATE & SOLICITOR

[O.C.J. (Rose C.J., Tan Ah Tah and Chua JJ.) March 2, 1962]

[Singapore — Originating Summons No. 152 of 1961]

Advocate and Solicitor — Professional misconduct — Preparation of false affidavit — Advocates and Solicitors Ordinance (Cap. 188), ss.25 and 30.

The preparation by a professional man of an affidavit that is untrue, and that is known to him to be untrue, is a very serious offence. In some cases of this kind the appropriate penalty would be either to strike off the offender (if it was a very bad case) or to suspend him for a period.

In this case the Court recorded a censure and ordered the respondent to pay costs.

ORIGINATING SUMMONS.

A. P. Godwin for the applicant.

L. A. J. Smith for the respondent.

Rose C.J. (delivering oral judgment): It is out of no disrespect to the arguments of learned counsel that I propose to give judgment straightaway. But as we have formed a definite view upon this matter it would seem to be in the interest of all concerned that there should be no undue delay.

The facts of the case are these; that the respondent, Mr. Muthuswamy, was acting for a particular client, a woman named Mahmooda, in a civil case in the High Court before one of my